



U.S. Department of Justice

Civil Division

Federal Programs Branch

20 Massachusetts Avenue, N.W.
Washington, D.C. 20530

February 28, 2018

The Honorable Andrew L. Carter, Jr.
United States District Judge
Southern District of New York
40 Foley Square, Room 435
New York, NY 10017

**Re: NAACP Legal Defense & Educational Fund, Inc., et al. v. Donald J. Trump, et al.,
No. 17-cv-05427 (ALC)**

Dear Judge Carter:

Defendants respectfully write to update the Court on the status of activities related to the termination of the former Presidential Advisory Commission on Election Integrity ("Commission").

As previously reported in defendants' January 18, 2018, letter (ECF No. 87), defendants submitted the Second Declaration of Charles C. Herndon, the Director of White House Information Technology, in *Dunlap v. Presidential Advisory Commission on Election Integrity*, No. 17-cv-2361 (CKK) (D.D.C.) (hereinafter "Second Herndon Decl.") (ECF No. 39-2 in *Dunlap*), informing the *Dunlap* court that "[n]o Commission member was provided access to the state voter data prior to the Commission's termination and none has access now[.]" "state voter data has never been transferred to, or accessed or utilized by, the Department of Homeland Security ('DHS') or any other agency[.]" and "will not be transferred to, or accessed or utilized by, DHS or any other agency, except to the National Archives and Records Administration ('NARA'), pursuant to federal law, if the records are not otherwise destroyed." Second Herndon Decl. ¶ 4 (ECF No. 87-1 in the present case). The declaration also makes clear that the "Commission did not create any preliminary findings." *Id.* ¶ 5.

Defendants have also submitted the Third Declaration of Charles C. Herndon in *Joyner v. Presidential Advisory Commission on Election Integrity*, No. 17-22568-CIV (COOKE/Goodman) (S.D. Fla.) (ECF No. 82-2 in *Joyner*) (attached hereto as Ex. A), which is largely the same as Mr. Herndon's Second Declaration, except for including a specific reference to the state voter data from Florida. Third Herndon Decl. ¶ 3.

Defendants have also submitted the Declaration of Philip C. Droege, the Director of the White House Office of Records Management, in the *Dunlap* litigation (ECF No. 44-1) (attached hereto as Ex. B). This declaration discusses the preservation of records of the former Commission

members, as well as a letter that Mr. Droege sent to the former Commission members instructing them to forward to his office any documents that the former Commission members created, gathered, or received relating to the former Commission and its activities that they have not already sent to the White House.

Finally, in the *Joyner* litigation, defendants have submitted the Sixth Declaration of Andrew J. Kossack, the Commission's former Designated Federal Officer (ECF No. 89-5) (attached hereto as Ex. C). This declaration discusses the disposition of records of the former Commission.

Defendants are submitting these declarations to provide a record of recent events relative to issues involved in this litigation.

Respectfully submitted,

/s/ Joseph E. Borson

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